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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/699,377

10/31/2003

Jens Mogens Nielsen

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20999 7590 07/10/2009  
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EXAMINER

PADEN, CAROLYN A

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

07/10/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/699,377	<b>Applicant(s)</b> NIELSEN ET AL.	
	<b>Examiner</b> Carolyn A. Paden	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 May 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-44, 47 and 49 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-44, 47 and 49 is/are rejected.
- 7) ☒ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

The rejection of the claims over Woldhuis in view of Van Der Graaf has been withdrawn for the reasons argued by applicant.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-44, 47 and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Loh (7,226,630) and Gaonkar (7,229,654) taken together .

. Each of Gaonkar (example 2) and Loh (example 5) disclose multi-component food products that have cheese in them. In each patent coated cheese is used in a sandwich formulation. The coated cheese products of the secondary references all have the ability to reduce the movement of water from the products. These two references are similar but Gaonkar with be used to describe the composition. The coating composition is made from a combination of a low melting fat and a high melting fat. The high melting fat is described in Gaonkar to include wax (column 8, line 61). The low melting fat is disclosed in claim 12 to include acetylated monoglycerides. The lipid layer includes 65 to 100 % low melting fat and 0

to 35% high melting fat (column 3, lines 51-60). In Loh the barrier composition was used to a cheese slice that is used on a cracker in example 5. The claims appear to differ from Gaonkar and Loh taken together in a specific example containing wax and compound ii. Gaonkar selects acetylated monoglyceride in example 1. Given the broad description of a high melting fat that includes wax and a low melting fat that includes acetylated monoglyceride, it would have been obvious to utilize wax as an obvious alternative high melting fat. It is appreciated that the specific wax of claim 2 is not mentioned but no unobvious or unexpected result is seen from the selection of one wax over the other. The selection of a specific fatty acid or ration of fatty acids and the extent of wax in the composition would have been within the determination of one of ordinary skill in the art who desires to adjust the specific properties of the coating composition. .

Claims 27-37 appears to differ in the extent of wax in the coated foodstuff. But no unobvious or unexpected result is seen to result from this feature because the extent of coating applied to a food would have been within the control of the food processor. Some foods may require more protective coating than other. Although the amount of auxiliary material of

claims 41-44 is not mentioned, no unobvious or unexpected result is seen from the particular amount used in the process.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached by dialing 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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/Carolyn Paden/

Primary Examiner 1794